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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,544	05/09/2002	Peter Steffen Ebert	07781.0021-00	7477
22852	7590	01/09/2008	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			KESACK, DANIEL	
			ART UNIT	PAPER NUMBER
			3691	
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			01/09/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

10/019,544

### Applicant(s)

EBERT, PETER STEFFEN

### Examiner

Dan Kesack

### Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. Amendment filed October 12, 2007 has been entered and fully considered.

Claims 1-52 are currently pending. The rejections are as stated below.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conley, Jr. et al., U.S. Patent No. 5,999,193, hereinafter Conley, in view of Applicant's admitted prior art, further in view of Ainsbury et al., U.S. Patent No. 6,078,924.

Claims 1, 4, 8, 14, 17, 21, 27, 30, 34, 40, 43, 47, Conley discloses a system and method for generating graphs for displaying a company's performance relative to industry standards (abstract), comprising:

accessing information relating to general performance of a business in relation to an industry wherein the information includes a business ratio value, and an industry average value; and

creating a display, including in the display the average value of the industry wherein the business ratio value is indicated in relation to the industry median value, and further including in the display at least one reference demarcation regarding a performance of the business in relation to the industry (figure 2).

Conley fails to teach the information including an industry upper quartile value, and industry median value, and an industry upper quartile value, and wherein the display includes said values.

Applicant discloses the invention substantially as claimed in Applicant's Description of Related Art section of the specification. Specifically, Applicant discloses that accessing information relating to general performance of a business, and the performance of an industry, wherein the information includes industry lower quartile value, an industry median value, and an industry upper value, processing said information, and displaying said information was known at the time of Applicant's invention (Applicant's specification, paragraphs 3 and 4). Furthermore, Applicant

discloses the "business ratios" are known in the art of benchmarking. Benchmarking is inherently a comparison of actual performance to a standard, and therefore it was known at the time of Applicant's invention to compare the performance of a business to the rest of the industry, using said "business ratios." It would have been obvious at the time of Applicant's invention to modify the teachings of Conley to include the industry lower quartile, industry mean, and industry upper quartile because these ratios are known to be the metrics used when comparing the performance of a business to the industry, which is the field of Conley's invention.

Furthermore, Conley and Applicant's admitted prior art fail to teach the information being automatically accessed electronically from a data provider.

Ainsbury discloses this feature. Ainsbury teaches a system and method for data collection, interpretation, and analysis, wherein business data is automatically retrieved electronically for a data provider (column 2 line 49 – column 3 line 40). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Conley and Applicant's admitted prior art to include the automatic retrieval of information as taught by Ainsbury because Ainsbury teaches it is advantageous to provide an application that automates the collection of data, thereby providing a market understanding necessary to execute rapid and knowledgeable decision making (column 2 lines 33-38).

Claims 2, 3, 9, 10, 15, 16, 22, 23, 28, 29, 35, 36, 41, 42, 48, 49, Conley and Ainsbury fail to teach the particulars of forming the display based on the information.

Official Notice is taken that graphing median, upper quartile, and lower quartile values in the form of a boxplot, and marking points on a line to compare values is old and well known in the art. The limitations of the claims are the mental steps which would be obvious to perform in creating a boxplot, and plotting a point on the line. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Conley and Ainsbury, and Applicant's specification to include a boxplot because benchmarking is a comparison of values, and plotting a point over a boxplot would be the optimal way to compare a value to a median, upper, and lower quartile value.

Claims 5-7, 11-13, 18-20, 24-26, 31-33, 37-39, 44-46, 50-52, Conley teaches a reference demarcation indicating the relation of the business to the industry, the demarcation including different colors or shading depending on where the business metric lies in relation to the industry metrics. It would be an obvious next step to include different demarcations depending on the relationship of the business metric to the median, upper quartile, and lower quartile values, according to Conley modified by Applicant's admitted prior art. Examiner notes that while Conley does not explicitly teach a plus and a minus sign, this limitation is regarded as design choice, and it would be obvious to use any color, symbol, or pattern.

***Response to Arguments***

5. Applicant's arguments with respect to amended claims 1, 8, 14, 27, 34, 40, and 47 have been considered but are moot in view of the new grounds of rejection.

6. In response to Applicant's challenging of the Official Notice in the Office Action of July 5, 2007, Examiner cites the Exploring Data Website reference. Exploring Data describes how to draw a boxplot, including the median, upper quartile and lower quartile values, and includes an explanation of how and why boxplots are used. As shown on page 10, multiple graphs can be used to compare different values, or display how one value or range compares to another. This is old and well known in the art of statistical analysis. While the reference shows multiple boxplots displayed next to each other, it would be obvious to display these graphs in any configuration, including overlaid, and using any known graphing techniques, including a single point demarcation of a value.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Kesack whose telephone number is 571-272-5882. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted,

Daniel Kesack  
Art Unit 3691  
January 6, 2008



HANI M. KAZIMI  
PRIMARY EXAMINER